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In re Application of  
Takashi Shirakawa et al  
Application No. 09/139,307  
Filed: August 24, 1998  
Attorney Docket No. 9281/3130

:  
: **DECISION**  
: **GRANTING**  
: **PETITION**  
:  
JAN 04 2010

This is a decision on the renewed petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on October 8, 2009.

The renewed petition under 37 CFR 1.137(b), filed on October 8, 2009, and the record as a whole, are before the Office of Patent Legal Administration for consideration.

### SUMMARY

The renewed petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on October 8, 2009, is **granted**.

### DECISION

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) a reply to the outstanding Office action, (2) the petition fee set forth in 37 CFR 1.17(m), and (3) a proper statement under 37 CFR 1.137(b)(3) that the entire delay in filing the required reply from the due date of the reply to the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. The applicant has filed payment of the issue fee and replacement drawings,<sup>1</sup> and a petition fee under 37 CFR 1.17(m), which satisfy items (1) and (2), respectively.

A statement under 37 CFR 1.137(b)(3) has also been submitted with the October 8, 2009 renewed petition (see page 2 of form PTO/SB/64), which satisfies item (3).

In the above-identified application, no. 09/139,307 ("the '307 application"), a notice of allowance was mailed on June 3, 1999, setting a statutory period for reply of three months from the mail date of the notice. The '307 application was abandoned as of September 7, 1999,<sup>2</sup> due to the failure to reply to the notice of allowance.

<sup>1</sup> See MPEP 711.03(c) II A 1.

<sup>2</sup> September 4, 1999 was a Saturday. Monday, September 6, 1999 was a holiday.

The submission of October 8, 2009 has been reviewed.

The '307 application has been abandoned for an extended period of time. In accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, the United States Patent and Trademark Office ("the Office") is relying on the duty of candor and good faith of the applicant and of applicant's representative. See also 37 CFR 1.4(d)(4), which incorporates 37 CFR 11.18(b), and *Changes to Patent Practice and Procedure*, 62 Fed. Reg. 53131, 53160, 53178; 1203 *Off. Gaz. Pat. Office* 63, 88, 103 (responses to comment nos. 64 and 109) (October 21, 1997) (final rule) (applicant's representative is obligated under [former] 37 CFR 10.18(b) [now 37 CFR 11.18(b)] to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b)(3) to the Office). Furthermore, while the present petition, including the statement under 37 CFR 1.137(b)(3), is signed by an attorney who is not of record in this application, the signature appearing on the petition constitutes a representation to the Office that the signing attorney is authorized to represent the applicant, pursuant to 37 CFR 1.34(a), and that the signing attorney has made an inquiry in accordance with 37 CFR 11.18(b), to ascertain that the delay was unintentional.

Accordingly, based on the certification under 37 CFR 1.4(d)(4), which incorporates 37 CFR 11.18(b), and on the specific facts and circumstances of this application, the renewed petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on October 8, 2009, is **granted**.

This file is being forwarded to the Office of Publications for processing of the issue fee payment and replacement drawings.

The patent practitioner who filed the renewed petition, Mr. Andrew M. Ollis of Oblon, Spivak, McClelland, Maier, & Neustadt, LLP, is not an attorney of record for this application. For this reason, a courtesy copy of this decision is being mailed to the address of Mr. Ollis at the law firm of Oblon, Spivak, McClelland, Maier, & Neustadt, LLP. However, all future correspondence will be mailed solely to the address of record.

Any inquiry concerning this decision should be directed to Cynthia L. Nessler, Senior Legal Advisor, at (571) 272-7724.



Brian E. Hanlon  
Director  
Office of Patent Legal Administration

cc: Andrew M. Ollis  
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